

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

*In the Matter of* )

Assumption of Responsibility )  
Of State Commission for )  
American Samoa )

cc Docket No. 98-239

**RECEIVED**

DEC 14 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**PETITION FOR ASSUMPTION OF STATE COMMISSION JURISDICTION  
UNDER SECTION 252(e)(5) OF THE COMMUNICATIONS ACT**

American Samoa License, Inc. ("ASLI"), by its attorneys, hereby petitions the Commission pursuant to Section 51.801 et seq. of the rules to assume preemptive jurisdiction over regulatory matters entrusted by Section 252(b) of the Communications Act of 1934, as amended, to the State commission of the Territory of American Samoa. As will be set forth more fully below, no State commission exists in American Samoa to discharge the functions contemplated by the 1996 Telecommunications Act. Moreover, to the extent that the government of American Samoa may attempt to discharge these responsibilities, it is subject to a direct conflict of interest which would bar it from acting as an arbitrator or decision-maker in an on-going interconnection dispute with its wholly-owned instrumentality.

## I. THE PARTIES

A. ASLI. ASLI is a corporation formed under the laws of the Territory of American Samoa for the purpose of operating a personal communications services (“PCS”) system in the American Samoa Basic Trading Area (“BTA”), consisting of the entirety of American Samoa.

ASLI holds a license granted to it by the Federal Communications Commission (“FCC”) for the construction and operation of a PCS system in the American Samoa BTA.<sup>1</sup> ASLI is a “telecommunications carrier,” as that term is defined in Section 153(a)(49) of the Act.<sup>2</sup>

B. ASTCA. American Samoa Telecommunications Authority (“ASTCA”) is the only local exchange telecommunications company operating in American Samoa. ASTCA is and has been at all material times a “local exchange carrier” (“LEC”), as defined by Section 3(44) of the Act, in American Samoa.<sup>3</sup> ASTCA’s address in American Samoa is: BOX M, Pago Pago, American Samoa 96799.

C. The Governor of American Samoa. The Governor of American Samoa is elected by the people of American Samoa and acts as the chief executive officer of the Territory. U.S. Dept. of the Interior Office of Insular Affairs, *Welcome to the Office of Insular Affairs Homepage* (last modified Dec. 10, 1998). By executive action, he created ASTCA early in 1998. He appoints all members of the ASTCA Board of directors. He thus exercises direct and complete control and dominion over ASTCA as a branch of his executive office.

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<sup>1</sup> Call sign KNLF 302 (BTA No., Frequency Block B).

## II. BACKGROUND

The present petition arises out of the unique regulatory and telecommunications structure which exists in the Territory of American Samoa. In May, 1998, representatives of ASLI initiated the process of negotiating an interconnection agreement with ASTCA. As indicated above, ASTCA is the sole provider of local exchange service in American Samoa. Interconnection with ASTCA is therefore essential in order for ASLI to deliver both its planned mobile traffic and its planned domestic and international interexchange traffic. On July 8, 1998, ASLI delivered a formal request to ASTCA to commence the interconnection negotiation process under the procedures established by Section 252(b) of the Act. The chief negotiator for ASTCA was Mr. Aleki Seni, ASTCA's executive director. Negotiations continued through the months of July, August, September and October, with the parties coming closer and closer to agreement. In November, a draft agreement reflecting the product of the negotiators was presented to the ASTCA Board of Directors. The Board rejected the draft agreement and instead proffered to ASLI two separate agreements – one for wireless-to-LEC interconnection and another for interexchange to LEC interconnection. Neither agreement included the key terms and conditions which had been negotiated out over some months. Rather, the new agreements were tendered on a take it or leave it basis on what was then the eve of ASLI's planned initiation of financing and constructing the system.

One of the thorniest areas of dispute had been the issue of which body would approve the agreement under the provisions of Section 252 of the Act and which body would arbitrate future disputes between the parties arising under the agreement. American Samoa has no Public

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<sup>2</sup> 47 USC § 153(a)(49)

<sup>3</sup> 47 USC § 153(26).

Service Commission or equivalent regulatory body with oversight jurisdiction or authority over telecommunications. For reasons which are set forth below, ASLI does not believe that the Governor of American Samoa is authorized to regulate telecommunications in the Territory and therefore does not constitute a "State commission" for purposes of Section 252. By the same token, given the identity of interest between ASTCA and the government of which it is a part, ASLI was unwilling to agree that either the initial agreement or subsequent disputes under the agreement could be arbitrated by the Governor. When the ASTCA Board rejected the previously negotiated agreement and tendered an unacceptable substitute, negotiations broke down completely. The window for filing a request for arbitration under the provisions of Section 252(b) of the Act commenced November 20 and will close on December 15.

On December 2, 1998, ASTCA filed a request for arbitration with the Governor of Samoa pursuant to Section 252(b) of the Act. (Copy attached as Exhibit A) On December 3, 1998, the Acting Governor of Samoa issued a letter by which he attempted to assume jurisdiction over the interconnection arbitration process. On December 4, 1998, ASLI filed suit in the High Court of American Samoa seeking a declaratory ruling that the Governor was not empowered under the Samoan constitution or any pertinent statute to exercise regulatory power over telecommunications in American Samoa. On December 7, 1998, however the Acting Governor issued an order setting a procedural schedule for conduct of the arbitration. On December 8, 1998, the Governor adopted "emergency regulations" designating himself as the Telecommunications Regulatory Commissioner for American Samoa. (Copy attached) As will be discussed further below, the regulations were adopted without notice or comment on an emergency basis under ASCA §4.1010 on the grounds that ASTCA's request for arbitration of an interconnection agreement constituted "an imminent peril to the public health, safety and

welfare.” Contemporaneously herewith, ASLI is petitioning the High Court of American Samoa to void those regulations as being patently contrary to law and not even colorably responsive to an “imminent peril to public safety.”

On or about December 11, 1998, ASLI filed a “Contingent Petition for Arbitration of Terms and Conditions” with the Governor’s office. That Petition disclaimed any authority on the part of the Governor to regulate telecommunications cited the manifest conflict of interest inherent in any attempt by the Governor to arbitrate, and asked the Governor to recuse itself from any further proceedings. The Petition was filed solely to preserve ASLI’s rights to arbitration in the event that the Governor were somehow found to be authorized to arbitrate. As a further precautionary measure, ASLI is submitting a copy of this Petition to the Department of Interior which is charged with general oversight of affairs in American Samoa. Because ASLI believes that the Commission has the authority and is the appropriate body under the Act to set the terms of interconnection, this Petition is being filed within the 160-day window provided by Section 252(b).

### **III. APPLICATION OF SECTION 51.801(b)**

Before addressing the merits of this petition, brief allusion to Section 51.801(b) of the rules is in order. That section provides that the Commission will assume jurisdiction under Section 252(e)(5) of the Act under three scenarios of failure by a State commission to act. In adopting the rule, the Commission made it clear that it was not taking an expansive view of its authority under Section 252(e). In the matter of Implementation of the Local Competition Provisions in The Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 11 FCC Rcd 15499, 16128, (1996) (subsequent history omitted) Legislative history provides

no guidance as to what circumstances were envisioned by Congress which would warrant FCC intervention after a State commission's failure to act. Joint Explanatory Statement, S. Conf. Rep. No. 104-230, 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 113 at 126 (1996). It appears that the Section was simply intended to ensure that the obligations imposed by Section 252 would not go unenforced if a State commission, for whatever reason, failed to discharge its responsibilities. While the statutory language is clearly broad enough to cover an absence of any State commission, the FCC in adopting 51.801(b) does not appear to have contemplated a situation where the failure by a State commission to act was the result of the outright absence of such a commission. The specific circumstances enumerated by the Commission therefore only envisage an existing State commission evading duties imposed by the statute.

ASLI submits that Congress' intent in adopting section 252(e) was to ensure that the other provisions of the section did not go unenforced because of a failure by State commissions to fill this role. The FCC was set up as the default arbitrator to ensure that such an eventuality would not occur. The deleterious effect on the public is, of course, quite the same regardless of whether there is no State commission or a commission simply refuses to act. The circumstance presented here, though not expressly contemplated by rule 51.801, is clearly within the ambit of circumstances in which Congress must have intended the FCC to act. Otherwise the lack of a State commission in a Territory (or in a state, for that matter) would have the result of nullifying in toto the protections and procedures called for by Section 252. ASLI therefore requests the Commission, if necessary, to waive the provisions of 47.C.F.R. 51.801(b) to permit FCC assumption of responsibility in the unique circumstances presented here.

#### **IV. THERE IS NO “STATE COMMISSION” IN AMERICAN SAMOA**

As indicated above, there is not now and never has been a Public Service Commission in American Samoa. This does not end the inquiry into the existence of a State commission, however, for under the Act, a State commission is defined as “the commission, board or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers”<sup>4</sup> It is therefore necessary to look to the American Samoa territorial laws to determine whether regulatory jurisdiction over telecommunications carriers has been conferred by those laws on any official.

ASLI has examined the American Samoa constitution and statutes and found no statutory grant of jurisdiction to the Governor to regulate the operations of telecommunications carriers within American Samoa. Indeed, ASLI has found no statutes at all specifically regulating the operation of telecommunications carriers within American Samoa. Moreover, the introduction of proposed legislation in American Samoa earlier in 1998, for the purpose of establishing a state regulatory commission for telecommunications is clear evidence that no individual or entity in American Samoa currently has jurisdiction to regulate the activities of telecommunications carriers.<sup>5</sup> The attempted adoption of “emergency” regulations by the Governor on December 8, 1998 further underscores this point. The hasty and irregular adoption of emergency regulations purporting to establish the governor as a “Telecommunications Regulatory Commissioner” and as the “State Commission” for purposes of the Act demonstrates conclusively that there was in fact no regulatory authority in American Samoa designated and empowered to regulate intrastate

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<sup>4</sup> 47 U.S.C. Section 3(41). “State” includes U.S. territories for purposes of the Act. 47 U.S.C. Section 3(40).

<sup>5</sup> SB No. 25-68, An Act creating The American Samoa Public Utility Commission providing for the powers, duties, and compensation of the Commission, establishing Annual Reports, prohibiting certain acts by public utilities, providing rate making authority and development, and authorizing special sessions; creating a chapter 04 under title 15 ASCA.”

telecommunications carriers. If there *had* been such an authority, the emergency regulations would obviously have been unnecessary. The Governor's attempt to fill that gap, albeit unlawful and untimely, acts as a concession that the gap exists. To confirm this point, ASLI has filed an appropriate Petition for a Declaratory ruling with the High Court of American Samoa. Given the absence of enabling legislation anywhere in the Samoan constitution or code, the refusal of the Samoan legislature to enact legislation creating such a regulatory authority in 1997, and the Governor's recent 11<sup>th</sup> hour attempt to create such authority for himself in response to ASLI's and ASTCA's dispute, there can be little doubt that we are confronted with unique condition in today's world: a regulatory void.

To be sure, the Governor has attempted to fill that void by anointing himself with the title of Telecommunications Regulatory Commissioner. Without addressing the substance of the argument to be presented to the High Court in Samoa, ASLI notes that the regulations were adopted pursuant to the emergency procedures authorized by ASCA Section 4.1010. Any reasonable observer must question how ASTCA's request for arbitration of an interconnection agreement constitutes an "imminent peril to the public health, safety and welfare." Absent such peril, the Governor had no authority whatsoever to rely on emergency powers granted by the legislature. This is especially true since the legislature itself declined to authorize the Governor to act in the capacity he has now unilaterally arrogated to himself. Moreover, the regulations clearly purport to confer substantive authority on the Governor (as Telecommunications Regulatory Commissioner) which he did not have previously. Again, the adoption of a rule affecting substantive rights may not be done on the emergency basis relied on by the Governor. ASCA Section 4.1010.



Apart from the non-emergency and non-procedural circumstances pertinent here, the regulations purport to have been adopted by the Telecommunications Regulatory Commissioner – the same official whose position was created by the regulations themselves. It is plainly impossible for an official to adopt the regulations which create the office which give him the authority to adopt the regulations which create his office. There are therefore serious problems with the legality of the regulations on their face. The High Court will in short order be asked to review these irregularities and set aside the Governor’s unlawful action.

One other circumstance is pertinent in considering whether the Commission should assume jurisdiction over the interconnection dispute in American Samoa. In enacting Section 252(e)(6) of the Act, Congress clearly intended that actions by State commissions in furtherance of the Act should be subject to review by the federal district courts of the United States. (“In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the whether the agreement or statement meets the requirements of Section 251 and this section.”) Parties therefore have the assurance that State commission actions will be subject to non-parochial judicial review.

Unfortunately no United States Federal district court has jurisdiction over American Samoa. Under the provisions of Section 252(e)(6), it is not clear that any appellate review at all is available for actions taken by a Samoan “State commission.” The local Samoan High Court is the court of general jurisdiction in the Territory, and appeals from that court go directly to the Secretary of the Interior. Thus, contrary to Congressional intent, any action by a putative “State commission” in American Samoa would not be subject to review by an Article III federal judge.

Given the irregularities which have plagued this proceeding and the manifest conflict of interest affecting the Governor, the need for Federal judicial review is particularly compelling.

**V. THE GOVERNOR CANNOT HERE FULFILL THE ROLE OF “STATE COMMISSION” AS ENVISIONED BY CONGRESS**

In addition to challenging the Governor’s authority to act, ASLI has also challenged the ability of the Governor’s Office, even if it is determined to be a “State commission,” to impartially preside over a dispute between ASTCA and one of its competitors. The ASG, in the person of its Governor, has been asked to arbitrate the differences between two disputants – one of which is not only directly under the Governor’s dominion and control but will also suffer or benefit by the outcome of the arbitration. The result is that the ASG is in the position of arbitrating a dispute in which it has a direct interest. Logic itself dictates that no matter how mightily the Governor or his agents struggle to maintain impartiality, it is impossible for them to excise the fundamental conflict at the heart of the situation. Moreover, if the Governor were to rule against ASLI in the arbitration, the appearance of “evident partiality” to its own affiliated entity would surely result in the vacation of any decision even if the merits otherwise supported such a decision. See, e.g. Burlington Northern Railroad Company v. TUCO, Inc., 960 S.W. 2d 629 (Tex. 1997); (Arbitration award vacated by Texas Supreme Court on grounds of “evident partiality” when arbitration failed to disclose possible conflict of interest); Nelson Bunker Hunt, et al. v. Mobil Oil Corp., 654 F.Supp. 1487, 1497 (S.D. NY 1987)

One of the most basic canons of judicial conduct is that a judge shall disqualify himself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where the judge knows that “he or she, individually or as a fiduciary...has an economic interest in the subject matter in controversy or in a party to the proceeding.” ABA Code of Judicial Conduct 3.E(c). Similar principles apply to arbitrators. Code of Ethics for

Arbitrators in Commercial Disputes (“An arbitrator should disclose any interest or relationship likely to affect impartiality or which might create an appearance of partiality or bias.”)

The ASG, acting through one of its key executive agencies, ASTCA, is a provider of local exchange telephone service with a direct financial interest in the terms, conditions and rates applicable to interconnection between itself and ASLI. ASTCA is an instrumentality of the ASG. It is owned by the ASG and all revenues generated by it flow directly or indirectly into ASG coffers. The Board of Directors of ASTCA consists of five individuals appointed by the Governor to oversee the operations of the existing telecommunications network, including its operations as a local exchange carrier. Three of the five directors must be ASG employees. As the sole local exchange carrier, ASTCA is one of the very entities whose bottleneck power the arbitration process established by the 1996 Telecommunications Act was intended to curb.

The lack of impartiality is concretely evidenced by the recently adopted “Regulations of Local Telecommunications Operations.” The haste with which the “regulations” were adopted in response to ASLI’s challenge to the Governor’s authority, without notice to, or comment from, ASLI or any other third party as required by law, is strongly suggestive that the ASG cannot be neutral a matter where an independent entity seeks to compete with ASTCA’s government-owned franchise.

Even if the Regulations of Local Telecommunications Operations are found to have been legally promulgated, the Governor’s appointment of himself as Telecommunications Regulatory Commission does not eliminate the need for the Governor’s Office to recuse itself from dispute involving interconnection with ASTCA. The same oversight, financial interest and intermingling of ASG employees with ASTCA remains in place. Because of the conflict inherent in the relationship between ASTCA and the ASG, the Governor’s office cannot

undertake or discharge the duties specified by Section 252(b) of the Communications Act, and the Commission must therefore become the arbitrator of last resort.

## **VI. DEMAND FOR ARBITRATION**

ASLI hereby requests that the Commission initiate an arbitration pursuant to the provisions of sections 51.801 et seq. of the Commission's rules to determine reasonable and proper terms of interconnection between ASTA and ASLI consistent with sections 251 and 252 of the Act. ASTCA and ASLI have reached an impasse and further negotiation is not contemplated. ASLI contemplates that some discovery will be necessary to determine the terms and conditions upon which ASTCA interconnects with itself and with other carriers. ASLI will request no less favorable terms and conditions, and terms otherwise consistent with FCC rules and policies implementing §§251 and 252.

A copy of this Petition is being served this date on ASTCA and the Governor of American Samoa.

A declaration attesting to the truth of the facts contained herein is attached.

Respectfully submitted,

American Samoa License, Inc.

By: 

William J. Sill

Donald J. Evans

Thomas W. Wilcox

Donelan, Cleary, Wood & Maser, P.C.  
1100 New York Avenue, N.W.  
Suite 750 West  
Washington, D.C. 20005  
(202) 371-9500

ATTACHMENT A

**American Samoa Telecommunications**

**Authority**

**Box-M**

**Pago Pago, American Samoa 96799**

In reply refer to:

Serial: 048-99  
ASTCA: 11  
December 2, 1999

The Honorable Governor Tauese P. F. Sunia  
Governor of American Samoa  
Pago Pago, American Samoa 96799

Re: Interconnection for ASTelecom and ASTCA  
Petition for Arbitration

Dear Governor Sunia:

The American Samoa Telecommunications Authority ("ASTCA") has received a copy of the letter to you dated November 30, 1998, from Mr. Charles Ala'ilima on behalf of American Samoa Telecom ("ASTelecom") regarding the negotiation of an interconnection agreement between ASTCA and ASTelecom. ASTCA hereby petitions you, in your capacity as the state commission for American Samoa under section 3 (40) and (41) of the federal Communications Act ("the Act"), for arbitration pursuant to section 252(b) of the Act of the open issues in the proposed interconnection agreement.

Contrary to Mr. Ala'ilima's letter, ASTCA has been entirely fair and forthcoming in the negotiation of the interconnection agreement. ASTCA adopted much of the draft agreement originally proposed by ASTelecom, and we worked with ASTelecom to shorten and simplify the text. On the critical issue of rates and charges, ASTCA has agreed to a rate schedule very close to the rates originally proposed by ASTelecom. Our Board has proceeded carefully because we realize that this interconnection agreement will establish a precedent for future companies which will be entitled to interconnection with ASTCA on equal terms. ASTCA's latest proposed agreement, which is enclosed, provides fair and reasonable terms and conditions for interconnection and is consistent with typical interconnection agreements on the Mainland.

The only specific open issue identified in Mr. Ala'ilima's letter is the definition of the local "Agency" responsible for approval of the interconnection agreement and arbitration of disputes. As shown in paragraph 1.2 of the enclosed draft agreement, ASTCA proposes to recognize the authority which the Governor has exercised as the regulator of local telecommunication operations, until such time as another local commission or agency is established. ASTCA has provided ASTelecom with a proposed text of an executive order by the Governor approving the interconnection agreement, which is enclosed.

Serial: 048-99

The Honorable Governor Tauese P.F. Sunia

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As shown in paragraph 1.1 of the latest agreement proposed by ASTelecom, which is enclosed, ASTelecom appears to accept the Governor's local regulatory authority. However, ASTelecom is seeking additional language to provide that the Federal Communications Commission ("FCC") shall serve as the local regulator and arbitrator in the event no local agency is available. ASTCA objects to this additional language because it carries a negative implication regarding the authority of the Governor to act as the regulator of local telecommunication operations. In addition, the additional language is unnecessary because section 252(e) of the Act specifically provides for intervention by the FCC if a local agency fails to carry out its regulatory responsibility.

Mr. Ala'ilima's letter to you states that ASTelecom made its formal request to ASTCA for interconnection on July 8, 1998. Thus, this petition for arbitration is timely under section 252(b) of the Act.

Accordingly, ASTCA respectfully requests that you, in your capacity as the state commission for American Samoa, arbitrate and resolve the open issues in the negotiation of the interconnection agreement between ASTCA and ASTelecom.

Respectfully Submitted,

American Samoa Telecommunications  
Authority

By   
Chairman

By:   
Executive Director

Enclosures: Latest interconnection agreement proposed by ASTCA  
Draft executive order proposed by ASTCA  
Latest interconnection agreement proposed by ASTelecom

xc: Charles V. Ala'ilima, Esq. (w/enclosures)

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TWS, INC.

TEL: 17707527136

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DEC-08-98 TUE 01:44 PM ASQ GOVERNOR'S OFFICE

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P. 01

ATTACHMENT B

# FAX

DOUG JUERGENS LEGAL COUNSEL GOVERNOR'S  
OFFICE, AMERICAN SAMOA PAGO PAGO, AS

96799

POB 6271

Pago Pago, AS 96799

Date 12/08/98

Number of pages including cover sheet 3

To: Charles Ala'ilima, AS Telecom

From: Doug Juergens 

Phone

Phone

011.684.633.4118

Fax Phone

684.6333

Fax Phone

011.684.633.2268

RE:

Regulations of Local  
Telecommunications  
Operations

## REMARKS

☐ Urgent

☒ For your review

☐ Reply ASAP

☐ Please comment

Please find attached emergency Regulations of Local Telecommunications Operations adopted by the Telecommunications Regulatory Commissioner December 8, 1998.

## Title 12

## PUBLIC UTILITIES AND ENERGY

## Chapters:

- 01 Power Authority.
- 02 Electric Service.
- 03 Water.
- 04 Sewer.
- 05 Emergency Energy Conservation Plan.
- 06 Regulations of Local Telecommunications Operations.

## Chapter 06

## REGULATIONS OF LOCAL TELECOMMUNICATIONS OPERATIONS

## Sections:

- 12.0601 Purpose.
- 12.0602 Definitions.
- 12.0603 Duties of Telecommunications Carriers.
- 12.0604 Jurisdiction.
- 12.0605 Procedures.
- 12.0606 Judicial Review.
- 12.0607 Declaration of an Emergency.

## 12.0601 Purpose.

The purpose of this Chapter is to provide for the regulations of local telecommunications operations in American Samoa in a manner which serves the public interest. The objectives of such regulations shall be:

A. To promote the rapid development of efficient, modern, and advanced telecommunications facilities and technologies;

B. To provide consumers access to high-quality telecommunications services at reasonable prices; and

C. To facilitate competition in the telecommunications marketplace on reasonable terms and conditions.

## 12.0602 Definitions.

A. "Telecommunications Regulatory Commissioner" or "Commissioner" means the Governor of American Samoa.

B. "Telecommunications carrier" means any person engaged as a common

carrier in providing telecommunications service for hire.

C. "Local" means within the Territory of American Samoa.

## 12.0603 Duties of Telecommunications Carriers.

It shall be the duty of every telecommunications carrier providing local service in American Samoa:

A. To provide such telecommunications service upon the reasonable request of any party;

B. To establish interconnection with other telecommunications carriers, subject to the orders of the Commissioner;

C. To establish charges, practices, classifications, terms, and conditions for telecommunications services which are just and reasonable.

D. Not to make any unjust or unreasonable discrimination in charges, practices, classifications, terms, conditions, facilities, or services, directly or indirectly, by any means or device, nor to give any undue or unreasonable preference, advantage, or disadvantage to any person or class of persons;

E. To publish its rates, terms, and conditions for telecommunications services, including interconnection, in the manner prescribed by the Commissioner; and

F. To cooperate in the proceedings of the Commissioner and to comply with the orders of the Commissioner.

## 12.0604 Jurisdiction.

The Telecommunications Regulatory Commissioner shall have regulatory jurisdiction with respect to the local operations of telecommunications carriers in American Samoa. The Commissioner shall perform the functions of the "state commissioner" for American Samoa under the federal Communications Act. 47 U.S.C. §153(41).

## 12.0605 Procedures.

A. Pleadings. Pleadings before the Commissioner shall be informal. Proceedings may be initiated by application, petition, complaint, or other form of pleading as may be appropriate under the circumstances.



**B. Proceedings.** Proceedings may be initiated by an initial pleading or by the Commissioner. When a proceeding has been initiated, the Commissioner shall give public notice of the proceeding and shall prescribe the time within which responsive pleadings or comments may be filed.

**C. Presiding Officers.** Where a proceeding involves contested matters, the Commissioner may appoint a Presiding Officer to conduct the proceeding. The Presiding Officer shall convene such meetings, hearings, conferences or other sessions as the Presiding Officer deems appropriate. The Presiding Officer shall prescribe the schedule and form for the submission of evidence, briefs, and arguments.

**D. Settlement.** The Presiding Officer shall encourage parties to negotiate and to resolve contested matters by mutual agreement. Concession and offers of compromise are inadmissible at any such meetings, hearings, conferences or other sessions.

**E. Discovery.** Any party may move the Presiding Officer for the production of documents or the discovery of other evidence in the possession of another party. Discovery shall be granted only upon a showing that material evidence is likely to be obtained. The Presiding Officer may place reasonable limits on any discovery.

**F. Recommended Decision.** The Presiding Officer shall make a recommended decision to the Commissioner. In the recommended decision the Presiding Officer shall provide an opportunity for the submission of objections to the recommended decision. Any objection not submitted in accordance with the recommended decision shall be waived.

**G. Final Decision.** The final decision shall be made by the Commissioner. The Commissioner may accept the recommended decision, accept the recommended decision with modifications, or reject the recommended decision. An order by the Commissioner remanding a proceeding to the Presiding Officer for further action shall not be a final decision.

#### 12.0606 Judicial Review.

Any party to a proceeding before the Commissioner which is aggrieved by a final decision of the Commissioner may petition for review of such decision by the High Court of American Samoa pursuant to ASCA §§4.1040 through 4.1044, except where preempted by federal law.

#### 12.0607 Declaration of an Emergency.

**A.** Pursuant to ASCA §4.1010 if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days' notice and states in writing its reasons for that finding it may proceed without prior notice or hearing.

**B.** The Telecommunications Regulatory Commissioner finds that fact exist which justifies adoption of the foregoing regulation upon fewer than 20 days' notice, to-wit:

1. The foregoing rules are rules of procedure and do not effect substantive rights.

2. The Telecommunications Act of 1934, as amended in 1996, requires incumbent local communications carriers to allow for interconnection of telecommunications services with communications carriers entering the market. Pursuant to federal law, the Telecommunications Regulatory Commissioner is required to accept or reject such interconnection agreements.

3. The Commissioner has received a request for an interconnection agreement which is presently under consideration. Because of certain time constraints imposed by federal law as regards the consideration of the interconnection agreement, insufficient time exists to give notice as provided by ASCA §4.1010.

4. Based on the foregoing findings the Commissioner finds that imminent peril to the public health, safety, and welfare requires adoption of the foregoing rule immediately upon filing the same as provided in ASCA §4.1008 upon fewer than 20 days' notice. According to law the foregoing rule will be effective for a period of 120 days from the effective date.

## DECLARATION OF LARRY GATTIS

I, Larry Gattis, hereby declare under penalty of perjury as follows:

1. I am the Vice-President-Technology of American Samoa Telecom, LLC ("AST"), parent company of American Samoa License, Inc. ("ASLI").

2. In this capacity, I attempted to negotiate an interconnection agreement between ASLI and American Samoa Telecommunicaitons Authority.

3. The account of our negotiations and the resulting impasse set forth in the attached "Petition for Assumption of State Commission Jursidiction Under Section 252 (e)(5) of the Communications Act" is true and correct to the best of my knowledge and belief.

  
Larry Gattis

12/14/98  
Date